

REMARKS

Claims 1-24 are pending. Claims 1-24 are rejected under 35 U.S.C. §103(a). Applicants respectfully traverse these rejections for at least the reasons stated below and respectfully request that the Examiner reconsider and withdraw these rejections.

I. REJECTIONS UNDER 35 U.S.C. §103(a):

- A. Claims 1-4, 6-9 and 11-14 are improperly rejected under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick and in further view of Schneier.

The Examiner has rejected claims 1-4, 6-9 and 11-14 under 35 U.S.C. §103(a) as being unpatentable over Pezzillo et al. (U.S. Patent No. 6,434,621) (hereinafter "Pezzillo") in view of Glick et al. (U.S. Publication No. 20020051540) (hereinafter "Glick") and in further view of Schneier (*Applied Cryptography*). Paper No. 3, page 2. Applicants respectfully traverse these rejections for at least the reasons stated below and respectfully request the Examiner to reconsider and withdraw these rejections.

1. Claims 1, 6 and 11 are patentable over Pezzillo in view of Glick and in further view of Schneier.

Applicants respectfully assert that Pezzillo, Glick and Schneier, taken singly or in combination, do not teach or suggest "providing a decryption key to a transmitter to be broadcasted within said defined distribution area of said broadcaster" as recited in claim 1 and similarly in claims 6 and 11. The Examiner cites column 5, lines 60-67 of Pezzillo as teaching transmitting digital packets of information over the Internet. Paper No. 3, page 2. The Examiner further cites paragraph 119 of Glick as teaching encrypting packets to restrict access to a defined distribution area. Paper No. 3, page 3. The Examiner further cites page 523 of Schneier as teaching broadcasting a key. Paper No. 3, page 3. Applicants respectfully traverse that the combination of these references teaches the above-cited claim limitation.

Pezzillo instead teaches that a webcaster is simulcasting the signal of a radio station that has certain restrictions on which programming is allowed to carry on the Internet, a time barrier followed by pre-recorded programming from the Contents

Database can create the required Internet blackout. Column 5, lines 61-65. Hence, Pezzillo teaches simulcasting a signal of a radio station over the Internet.

Glick instead teaches that location identity based encryption takes a characteristically different approach from previous cryptographic methods with respect to the sharing of cryptographic keys. [0119]. Glick further teaches that there are two pieces of requisite information for constructing the symmetric decryption, including: a) the playback location known to the playback device, and b) the shape-parm pattern that is included with the encrypted digital information. [0119]. Glick further teaches that neither piece of information alone is sufficient to construct a decryption key. [0119]. Glick further teaches that the encryption is specific to a geographic area and the encryption algorithm need not know anything about the user or device on which the decryption will occur. [0119]. Glick further teaches that in the present invention, however, there is no key distribution problem. [0085]. Glick further teaches that the encryption/decryption key can be constructed only from locationless information contained with the digital information, and the player location for the appliance. [0085]. Glick further teaches that only an appliance located within the proximate area defined by the location identity attribute when the file was encrypted can view or playback the digital information. [0085]. Hence, Glick teaches a different approach to cryptographic methods by not distributing or sharing cryptographic keys. Glick further teaches that this different approach does not involve specifically distributing a decryption key but is constructed from locationless information contained with the digital information and the player location for the appliance (see paragraph 0085).

Schneier instead teaches broadcasting an encrypted message. Page 523.

None of these references, taken singly or in combination, teach providing a decryption key to a transmitter. Glick teaches away from specifically transmitting a decryption key but instead teaches that a decryption key is constructed from locationless information contained with the digital information and the player location for the appliance. Further, Schneier is silent regarding providing a decryption key to a transmitter. Therefore, the Examiner has not presented a *prima facie* case of

obviousness in rejecting claims 1, 6 and 11, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Neither do any of these references, taken singly or in combination, teach providing a decryption key to a transmitter to be broadcasted within a defined distribution area of the broadcaster. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 6 and 11, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

2. Claims 2-4, 7-9 and 12-14 are patentable over Pezzillo in view of Glick and in further view of Schneier for at the reasons stated in Section A.1.

Claims 2-4 depend from claim 1 and hence are patentable over Pezzillo in view of Glick and in further view of Schneier for at least the reasons that claim 1 is patentable over Pezzillo in view of Glick and in further view of Schneier as discussed in Section A.1. Claims 7-9 depend from claim 6 and hence are patentable over Pezzillo in view of Glick and in further view of Schneier for at least the reasons that claim 6 is patentable over Pezzillo in view of Glick and in further view of Schneier as discussed in Section A.1. Claims 12-14 depend from claim 11 and hence are patentable over Pezzillo in view of Glick and in further view of Schneier for at least the reasons that claim 11 is patentable over Pezzillo in view of Glick and in further view of Schneier as discussed in Section A.1.

3. Claims 2, 7 and 12 are patentable over Pezzillo in view of Glick and in further view of Schneier.

Applicants respectfully assert that Pezzillo in view of Glick and in further view of Schneier, taken singly or in combination, do not teach or suggest "receiving said decryption key by one or more users of computer systems located approximately within said defined distribution area of said broadcaster" as recited in claim 2 and similarly in claims 7 and 12. The Examiner cites page 523 of Schneier and Glick as teaching the above-cited claim limitation. Paper No. 3, page 3. Applicants respectfully traverse.

Schneier instead teaches broadcasting an encrypted message. Page 523. Glick instead teaches transmitting encrypted digital information that includes a shape parameter that is used in conjunction with the appliance location to decrypt the encrypted digital information by the appliance. [0017].

There is no language in either Schneier or Glick (taken singly or in combination) that teaches receiving a decryption key by users of computer systems. Neither is there any language in either Schneier or Glick (taken singly or in combination) that teaches receiving a decryption key by users of computer systems located approximately within a defined distribution area. Neither is there any language in either Schneier or Glick (taken singly or in combination) that teaches receiving a decryption key by users of computer systems located approximately within a defined distribution area of a broadcaster. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2, 7 and 12, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

4. Claims 4, 9 and 14 are patentable over Pezzillo in view of Glick and in further view of Schneier.

Applicants respectfully assert that Pezzillo in view of Glick and in further view of Schneier, taken singly or in combination, do not teach or suggest "reproducing said decrypted digital broadcast by an audio transducer" as recited in claim 4 and similarly in claims 9 and 14. The Examiner takes Official Notice that it would have been obvious to a person of ordinary skill in the art to use an audio transducer to reproduce the digital broadcast. Paper No. 3, page 4. The Examiner's motivation is to allow the receiver to hear the digital broadcast. Paper No. 3, page 4.

Applicants respectfully traverse the implied assertion that it would have been obvious to one of ordinary skill in the art to modify Pezzillo in view of Glick and in further view of Schneier to reproduce a decrypted digital broadcast by an audio transducer. Applicants respectfully request the Examiner to provide a reference that teaches reproducing a decrypted digital broadcast by an audio transducer pursuant to M.P.E.P. §2144.03. Furthermore, the Examiner is reminded that in order to establish

a *prima facie* case of obviousness the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved, to modify the reference or to combine reference teachings. See *In re Dembiczak*, 175 F.3d 1994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Examiner states "to allow the receiver to hear the digital broadcast" as motivation. However, the Examiner has not provided any evidence that his motivation comes from any of the sources listed above. Instead, the Examiner is relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 4, 9 and 14. *Id.*

5. The Examiner has not provided any objective evidence or appropriate motivation for modifying Pezzillo with Glick and Schneier.

A *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d. 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner admits that Pezzillo does not teach encrypting digital packets of information, as recited in claim 1 and similarly in claims 6 and 11. Paper No. 3, page 2. Further, the Examiner admits that Pezzillo does not teach transmitting encrypted digital packets of information over the Internet, as recited in claim 1 and similarly in claims 6 and 11. Paper No. 3, page 2. Further, the Examiner admits that Pezzillo does not teach providing a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster, as recited in claim 1 and similarly in

claims 6 and 11. Paper No. 3, page 2. The Examiner identifies paragraph 119, of the reference Glick, as teaching encrypting packets to restrict access to a defined distribution area and identifies page 523, of the reference Schneier, as teaching broadcasting a key. Paper No. 3, page 3. The Examiner then concludes that by combining these references that the above-cited claim limitations would be taught. Paper No. 3, page 3. The Examiner's motivation for combining these references is that it "would have been to allow anyone in a defined geographic area to decrypt the information (see paragraph 119) and to share the decryption key with the users (see page 523)". Paper No. 3, page 3. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

In order to establish a *prima facie* case of obviousness, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 1994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Examiner appears to be asserting that the motivation is found in the references themselves, namely page 119 of Glick and page 523 of Schneier. If the Examiner is asserting that the motivation comes from either the knowledge of one of ordinary skill in the art or from the nature of the problem to be solved¹, then Applicants respectfully request the Examiner to specify as such.

The Examiner cites paragraph 119 of Glick as support for his motivation which teaches that location identity based encryption takes a characteristically different approach from previous cryptographic methods with respect to the sharing of cryptographic keys. [0119]. Glick further teaches that there are two pieces of

¹ Pezzillo addresses the problem of automatically controlling advertising inserts and associate ads with particular shows or program schedule rules (column 2, lines 58-60). Glick addresses the problem of providing a way to control the interchange of digital information and prevents unauthorized copying of copyright-protected content (paragraph 0015). Schneier does not specifically address a problem to be solved, rather, Schneier discusses conference key distribution and secret broadcasting (page 523). Hence, the nature of the problem to be solved by each of these references do not provide any motivation for modifying Pezzillo to incorporate the above-cited claim limitations.

requisite information for constructing the symmetric decryption, including: a) the playback location known to the playback device, and b) the shape-parm pattern that is included with the encrypted digital information. [0119]. Glick further teaches that neither piece of information alone is sufficient to construct a decryption key. [0119]. Glick further teaches that the encryption is specific to a geographic area and the encryption algorithm need not know anything about the user or device on which the decryption will occur. [0119]. Hence, Glick teaches a different approach to cryptographic methods by not distributing or sharing cryptographic keys. Glick further teaches that this different approach does not involve distributing a decryption key. There is no language in the cited passage that provides a motivation for modifying Pezzillo to transmit encrypted digital packets of information over the Internet. Neither is there any language in the cited passage that provides a motivation for modifying Pezzillo to provide a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster. The Examiner has not provided any objective evidence of there being a connection between the teaching of location identity based encryption (paragraph 119 of Glick) and modifying Pezzillo to include the above-cited claim limitations. The Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1-24. *Id.*

Further, the Examiner cites page 523 of Schneier as support for his motivation which teaches conference key distribution and secret broadcasting. Page 523. There is no language in the cited passage that provides a motivation for modifying Pezzillo to transmit encrypted digital packets of information over the Internet. Neither is there any language in the cited passage that provides a motivation for modifying Pezzillo to provide a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster. The Examiner has not provided any objective evidence of there being a connection between the teaching of conference key distribution and secret broadcasting (paragraph 523 of Schneier) and modifying Pezzillo to include the above-cited claim limitations. The Examiner is merely relying

upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1-24. *Id.*

6. By modifying Glick with Pezzillo and Schneier to include the limitation of providing a decryption key to a transmitter, the principle of operation of Glick would change.

If the proposed modification or combination of the prior art would change the principle of the operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (C.C.P.A. 1959). Further, if the proposed modification would render the prior art invention being modified unsatisfactorily for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). For the reasons discussed below, Applicants submit that by modifying Glick with Pezzillo and Schneier to include the limitation of providing a decryption key to a transmitter, the principle of operation in Glick would change and subsequently render the operation of Glick to perform its purpose unsatisfactorily.

Glick teaches a method and apparatus for controlling access to digital information utilizing a location identity attribute that defines a specific geographic location. Abstract. Glick further teaches that the location identity attribute is associated with the digital information such that the digital information can be accessed only at the specific geographic location. Abstract. Glick further teaches that the location identity attribute further includes a location value and a proximity value. Abstract. Glick further teaches that the location value corresponds to a location of an intended recipient appliance of the digital information, and may be further defined in terms of latitude, longitude and altitude dimensions. Abstract. Glick further teaches that the digital information is encrypted using a geolocking key based at least in part on the location identity attribute. Abstract. Glick further teaches that the geolocking key is based on a shape parameter that is determined from the location identity attribute and is included with the encrypted digital information.

Abstract. Glick further teaches that the shape parameter describes a shape of a geographic area, but does not identify where the geographic area is located. Abstract. Glick further teaches that the appliance that receives the encrypted digital information can generate the geolocking key to decrypt the digital information based on the received shape parameter and the appliance location. Abstract. Glick further teaches that if the appliance location is not within the proximate area of the location identity attribute, the appliance will be unable to generate the geolocking key to decrypt the digital information. Abstract.

By modifying Glick with Pezzillo and Schneier to include the limitation of providing a decryption key to a transmitter, Glick would have to modify its location identity based encryption method by including a decryption key in its encrypted digital information. As stated above, Glick taught simply including a shape parameter in the encrypted digital information and having the recipient using the shape parameter as well as the location of the playback device to generate a geolocking key to decrypt the encrypted digital information. In this manner, only those located within a proximate area of the location identity attribute would be able to decrypt the digital information. However, by modifying Glick with Pezzillo and Schneier, those that live outside the proximate area of the location identity attribute may be able to decrypt the digital information since the decryption key is included in the encrypted digital information. Thus, by modifying Glick with Pezzillo and Schneier, the principle of operation in Glick would change, and subsequently render the operation of Glick to perform its purpose unsatisfactorily. Therefore, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 1-24. *In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984); *In re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (C.C.P.A. 1959).

B. Claims 5, 10 and 15 are patentable over Pezzillo in view of Glick in further view of Schneier and in further view of Kelly.

The Examiner has rejected claims 5, 10 and 15 under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick in further view of Schneier and in further view of Kelly et al. (U.S. Publication No. 20030050015) (hereinafter "Kelly").

Paper No. 3, page 4. Applicants respectfully traverse these rejections for at least the reasons stated below and respectfully request the Examiner to reconsider and withdraw these rejections.

1. The Examiner has not provided any objective evidence or appropriate motivation for modifying Pezzillo, Glick and Schneier with Kelly.

As stated above, a *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d. 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner admits that Pezzillo, Glick and Schneier do not teach transmitting a decryption key via electromagnetic waves within a defined distribution area of the broadcaster, as recited in claim 5 and similarly in claims 10 and 15. Paper No. 3, page 4. The Examiner states that Kelly teaches the use of electromagnetic waves (see paragraph 270). Paper No. 3, page 4. The Examiner then concludes that by combining these references that the above-cited claim limitations would be taught. Paper No. 3, page 4. The Examiner's motivation for combining these references is that it "would have been to allow the use of RF or IR data communications". Paper No. 3, page 4. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

In order to establish a *prima facie* case of obviousness, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See*

In re Dembiczak, 175 F.3d 1994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Examiner states "to allow the use of RF or IR data communications" as motivation. However, the Examiner has not provided any evidence that his motivation comes from any of the sources listed above. Instead, the Examiner is relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 5, 10 and 15. *Id.*

Furthermore, the Examiner's motivation ("to allow the use of RF or IR data communications") is not a motivation or suggestion for modifying Pezzillo, Glick and Schneier to transmit a decryption key via electromagnetic waves within a defined distribution area of the broadcaster. The Examiner must provide objective evidence for modifying Pezzillo, Glick and Schneier to include the above-cited claim limitation. The Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 5, 10 and 15. *Id.*

2. Claims 5, 10 and 15 are patentable over Pezzillo in view of Glick in further view of Schneier and in further view of Kelly.

Applicants respectfully assert that Pezzillo in view of Glick in further view of Schneier and in further view of Kelly, taken singly or in combination, do not teach or suggest "wherein said decryption key is transmitted via electromagnetic waves within said defined distribution area of said broadcaster" as recited in claim 5 and similarly in claims 10 and 15. The Examiner cites paragraph 270 of Kelly as teaching electromagnetic waves. Paper No. 3, page 4. The Examiner concludes that taken the references in combination teaches the above-cited claim limitation. Paper No. 3, page 4. Applicants respectfully traverse.

Pezzillo instead teaches a webcaster simulcasting the signal of a radio station that has certain restrictions on which programming it is allowed to carry on the Internet. Column 5, lines 61-63.

As stated above, Glick instead teaches that there are two pieces of requisite information for constructing the symmetric decryption, including a) the playback location known to the playback device, and b) the shape-parm parameter that is included with the encrypted digital information. [0119].

Schneier instead teaches broadcasting an encrypted message. Page 523.

Kelly instead teaches a medium that participates in providing instructions to a processor may take the form of transmission media which includes electromagnetic waves. [0270].

None of these references, taken singly or in combination, teach transmitting a decryption key via electromagnetic waves. Kelly teaches providing instructions to a processor via electromagnetic waves. Schneier teaches broadcasting an encrypted message. Glick does not teach transmitting a decrypting key but instead teaches transmitting a shape-parm parameter with the encrypted digital information. Hence, the references in combination do not teach transmitting a decryption key via electromagnetic waves. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 5, 10 and 15, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Neither do these references, taken singly or in combination, teach transmitting a decryption key via electromagnetic waves within a defined distribution area of a broadcaster. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 5, 10 and 15, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

C. Claims 16, 18-19, 21-22 and 24 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick.

The Examiner has rejected claims 16, 18-19, 21-22 and 24 under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick. Paper No. 3, page 5. Applicants respectfully traverse these rejections for at least the reasons stated below and respectfully request the Examiner to reconsider and withdraw these rejections.

1. Claims 16, 19 and 22 are patentable over Pezzillo in view of Glick.

Applicants respectfully assert that Pezzillo and Glick, taken singly or in combination, do not teach or suggest "transmitting said broadcast over the Internet to said requester if said requester is physically located approximately within said defined distribution area" as recited in claim 16 and similarly in claims 19 and 22. The Examiner cites paragraphs 119 and 121-122 of Glick as teaching the above-cited claim limitation. Paper No. 3, page 5. Applicants respectfully traverse.

Glick instead teaches that location identity based encryption takes a characteristically different approach from previous cryptographic methods with respect to the sharing of cryptographic keys. [0119]. Glick further teaches that there are two pieces of requisite information for constructing the symmetric decryption, including: a) the playback location known to the playback device, and b) the shape-parm pattern that is included with the encrypted digital information. [0119]. Glick further teaches that neither piece of information alone is sufficient to construct a decryption key. [0119]. Glick further teaches that the encryption is specific to a geographic area and the encryption algorithm need not know anything about the user or device on which the decryption will occur. [0119]. Glick further teaches an exemplary application in which a customer orders digital film or audio through a vendor's catalog. [0121]. Glick further teaches that when a vendor fills the order, the location identity attribute associated with the customer is determined and used to generate an encryption key that is then used to encrypt the digital information file for the media. [0121]. Glick further teaches that the purchased media is then custom encrypted for the order, copied to a format such as DVD or CD-ROM, and packaged with a viewer that is also customized for the location identity attribute. [0121]. Glick further teaches that even if the entire contents of the purchased media are copied, the viewer and media, customized with the location identity attribute, prevent viewing except in the allowable region. [0121]. Glick further teaches that the appliance that receives the encrypted digital information can generate the geolocking key to decrypt the digital information based on the received shape parameter and the appliance location. Abstract. Glick further teaches that if the appliance location is not within

the proximate area of the location identity attribute, the appliance will be unable to generate the geolocking key to decrypt the digital information. Abstract. Glick further teaches an exemplary application in which a location identity is used to 'narrowcast' information over public networks. [0122]. Glick further teaches that narrowcasting refers to the transmission of information to an audience at specific locations in contrast to point-to-point transmissions or a broadcast transmission to unrestricted locations. [0122].

Hence, Glick teaches transmitting information to an audience at specific locations over public networks. Glick further teaches encrypting a digital information file for media using a location identity attribute associated with the customer. However, Glick does not teach transmitting a broadcast over the Internet to a requester if the requester is physically located approximately within the defined distribution area. Instead, Glick teaches that encrypted digital information would still be transmitted even if the appliance is not located within a region defined by the location identity attribute. The appliance would just not be able to decrypt the encrypted digital information if the appliance location is not within the proximate area of the location identity attribute. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 16, 19 and 22, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

2. Claims 18, 21 and 24 are patentable over Pezzillo in view of Glick for at least the reasons that claims 16, 19 and 22 are patentable over Pezzillo in view of Glick.

Claims 18, 21 and 24 depend from claims 16, 19 and 22, respectively, and therefore are patentable over Pezzillo in view of Glick for at least the reasons that claims 16, 19 and 22 are patentable over Pezzillo in view of Glick as stated above in Section C.1.

3. Claims 18, 21 and 24 are patentable over Pezzillo in view of Glick since Pezzillo and Glick.

Applicants respectfully assert that Pezzillo and Glick, taken singly or in combination, do not teach or suggest "wherein said broadcast is not transmitted over the Internet to said requester if said requester is physically located approximately outside said defined distribution area" as recited in claim 18 and similarly in claims 21 and 24. The Examiner cites paragraphs 119 and 121-122 of Glick as teaching the above-cited claim limitation. Paper No. 3, page 5. Applicants respectfully traverse. As stated above, Glick teaches transmitting information to an audience at specific locations over public networks. Glick further teaches encrypting a digital information file for media using a location identity attribute associated with the customer. However, Glick does not teach not transmitting a broadcast over the Internet to a requester if the requester is physically located approximately outside the defined distribution area. Instead, Glick teaches that encrypted digital information would still be transmitted even if the appliance is not located within a region defined by the location identity attribute. The appliance would just not be able to decrypt the encrypted digital information if the appliance location is not within the proximate area of the location identity attribute. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 18, 21 and 24, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

4. The Examiner has not provided any objective evidence or appropriate motivation for modifying Pezzillo with Glick.

As stated above, a *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d. 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner admits that Pezzillo does not teach receiving a request to transmit a broadcast over the Internet from a requester; determining an approximate physical location of the requester; and transmitting the broadcast over the Internet to the requester if the requester is physically located approximately within the defined distribution area, as recited in claim 16 and similarly in claims 19 and 22. Paper No. 3, page 5. Further, the Examiner admits that Pezzillo does not teach not transmitting the broadcast over the Internet to the requester if the requester is physically located approximately outside the defined distribution area, as recited in claim 19 and similarly in claims 21 and 24. Paper No. 3, page 5. The Examiner asserts that Glick teaches these limitations. Paper No. 3, page 5. The Examiner then concludes that by combining these references that the above-cited claim limitations would be taught. Paper No. 3, page 5. The Examiner's motivation for combining these references is that it "would have been to allow anyone in a defined geographic area to obtain the information (see paragraph 119)". Paper No. 3, page 5. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

In order to establish a *prima facie* case of obviousness, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 1994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Examiner appears to be asserting that the motivation is found in the references themselves, namely page 119 of Glick. If the Examiner is asserting that the motivation comes from either the knowledge of one of ordinary skill in the art or from the nature of the problem to be solved², then Applicants respectfully request the Examiner to specify as such.

² Pezzillo addresses the problem of automatically controlling advertising inserts and associate ads with particular shows or program schedule rules (column 2, lines 58-60). Glick addresses the problem of providing a way to control the interchange of digital information and prevents unauthorized copying of copyright-protected content (paragraph 0015). Hence, the nature of the problem to be solved by each of these

The Examiner cites paragraph 119 of Glick as support for his motivation which teaches that location identity based encryption takes a characteristically different approach from previous cryptographic methods with respect to the sharing of cryptographic keys. [0119]. Glick further teaches that there are two pieces of requisite information for constructing the symmetric decryption, including: a) the playback location known to the playback device, and b) the shape-parm pattern that is included with the encrypted digital information. [0119]. Glick further teaches that neither piece of information alone is sufficient to construct a decryption key. [0119]. Glick further teaches that the encryption is specific to a geographic area and the encryption algorithm need not know anything about the user or device on which the decryption will occur. [0119]. Hence, Glick teaches a different approach to cryptographic methods by not distributing or sharing cryptographic keys. Glick further teaches that this different approach does not involve distributing a decryption key. There is no language in the cited passage that provides a motivation for modifying Pezzillo to transmit a broadcast over the Internet from a requester. Neither is there any language in the cited passage that provides a motivation for modifying Pezzillo to determine an approximate physical location of the requester. Neither is there any language in the cited passage that provides a motivation for modifying Pezzillo to transmit the broadcast over the Internet to the requester if the requester is physically located approximately within the defined distribution area. Neither is there any language in the cited passage that provides a motivation for modifying Pezzillo to not transmit the broadcast over the Internet to the requester if the requester is physically located approximately outside the defined distribution area.

The Examiner has not provided any objective evidence of there being a connection between the teaching of location identity based encryption (paragraph 119 of Glick) and modifying Pezzillo to include the above-cited claim limitations. The Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed.

references do not provide any motivation for modifying Pezzillo to incorporate the above-cited claim limitations.

Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 16, 18-19, 21-22 and 24. *Id.*

- D. Claims 17, 20 and 23 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick and in further view of Schlossberg.

The Examiner has rejected claims 17, 20 and 23 under 35 U.S.C. §103(a) as being unpatentable over Pezzillo in view of Glick and in further view of Schlossberg et al. (U.S. Publication No. 20020066034) (hereinafter "Schlossberg"). Paper No. 3, page 6. Applicants respectfully traverse these rejections for at least the reasons stated below and respectfully request the Examiner to reconsider and withdraw these rejections.

1. The Examiner has not provided any objective evidence or appropriate motivation for modifying Pezzillo and Glick with Schlossberg.

As stated above, a *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d. 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner admits that Pezzillo and Glick do not teach capturing an Internet Protocol of the requester; converting the captured Internet Protocol of the requester into a computer name; and performing a trace of the request, as recited in claim 17 and similarly in claims 20 and 23. Paper No. 3, page 6. The Examiner states that Schlossberg teaches the above-cited claim limitations. Paper No. 3, page 6. The Examiner then concludes that by combining these references that the above-

cited claim limitations would be taught. Paper No. 3, page 6. The Examiner's motivation for combining these references is that it "would have been to determine the physical location of a device on the Internet". Paper No. 3, page 6. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

In order to establish a *prima facie* case of obviousness, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 1994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Examiner states "to determine the physical location of a device on the Internet" as motivation. However, the Examiner has not provided any evidence that his motivation comes from any of the sources listed above. Instead, the Examiner is relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 17, 20 and 23. *Id.*

Furthermore, if the Examiner is asserting that the motivation comes from either the knowledge of one of ordinary skill in the art or from the nature of the problem to be solved³, then Applicants respectfully request the Examiner to specify as such.

Furthermore, the Examiner's motivation ("to determine the physical location of a device on the Internet") appears to have been gleaned from Applicants' disclosure

³ Pezzillo addresses the problem of automatically controlling advertising inserts and associate ads with particular shows or program schedule rules (column 2, lines 58-60). Glick addresses the problem of providing a way to control the interchange of digital information and prevents unauthorized copying of copyright-protected content (paragraph 0015). Schlossberg address the problem of security systems being limited in their ability to detect or deny access to assailants who are highly skilled in overcoming simple deception methods (paragraph 0011). Hence, the nature of the problem to be solved by each of these references do not provide any motivation for modifying Pezzillo and Glick to incorporate the above-cited claim limitations.

(page 17 of Applicant's Specification). Any judgment on obviousness must not include knowledge gleaned only from applicant's disclosure. *In re McLaughlin*, 170 U.S.P.Q. 209, 212 (C.C.P.A. 1971). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness in rejecting claims 17, 20 and 23 since it is merely the Examiner's subjective opinion. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

E. Claims 1-16, 18-19, 21-22 and 24 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over CNN in view of Schneier.

The Examiner rejects claims 1-16, 18-19, 21-22 and 24 under 35 U.S.C. §103(a) as being unpatentable over iCraveTV (CNN Story) (hereinafter "CNN") in view of Schneier. Paper No. 3, page 6. Applicants respectfully traverse these rejections for at least the reasons stated below and respectfully request the Examiner to reconsider and withdraw these rejections.

1. The Examiner has not provided any objective evidence or appropriate motivation for modifying CNN with Schneier.

As stated above, a *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d. 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner admits that CNN does not teach encrypting the digital packets of information; transmitting encrypted digital packets of information over the Internet and providing a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster, as recited in claim 1 and similarly in claims 6 and 11. The Examiner states that Schneier teaches the above-cited claim limitations.

Paper No. 3, page 7. The Examiner then concludes that by combining these references that the above-cited claim limitations would be taught. Paper No. 3, page 7. The Examiner's motivation for combining these references is that it "would have been to be able to share the decryption key with specific users (see page 523)". Paper No. 3, page 7. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

In order to establish a *prima facie* case of obviousness, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 1994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Examiner appears to be asserting that the motivation is found in the references themselves, namely page 523 of Schneier. If the Examiner is asserting that the motivation comes from either the knowledge of one of ordinary skill in the art or from the nature of the problem to be solved⁴, then Applicants respectfully request the Examiner to specify as such.

As stated above, the Examiner cites page 523 of Schneier as support for his motivation which teaches conference key distribution and secret broadcasting. Page 523. There is no language in the cited passage that provides a motivation for modifying CNN, an article that discusses some of the legal issues involved in broadcasting television channels over the Internet, to encrypt digital packets of information. Neither is there any language in the cited passage that provides a motivation for modifying CNN to transmit encrypted digital packets of information over the Internet. Neither is there any language in the cited passage that provides a motivation for modifying CNN to provide a decryption key to a transmitter to be

⁴ CNN does not specifically address a problem to be solved, rather, CNN discusses some of the legal issues involved in broadcasting television channels over the Internet. Schneier does not specifically address a problem to be solved, rather, Schneier discusses conference key distribution and secret broadcasting (page 523). Hence, the nature of the problem to be solved by each of these references do not provide any motivation for modifying CNN to incorporate the above-cited claim limitations.

broadcasted within the defined distribution area of the broadcaster. The Examiner has not provided any objective evidence of there being a connection between the teaching of conference key distribution and secret broadcasting (paragraph 523 of Schneier) and modifying CNN to include the above-cited claim limitations. The Examiner is merely relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 1-15. *Id.*

Furthermore, the Examiner's motivation ("to be able to share the decryption key with specific users") does not address as to why one of ordinary skill in the art would modify CNN, which teaches broadcasting television channels over the Internet, to encrypt the digital packets of information; to transmit encrypted digital packets of information over the Internet and to provide a decryption key to a transmitter to be broadcasted within the defined distribution area of the broadcaster. The Examiner must provide objective evidence of there being a motivation to modify CNN as such. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Since the Examiner is relying upon his own subjective opinion, the Examiner has not established a *prima facie* case of obviousness in rejecting claims 1-15. *Id.*

2. CNN and Schneier, taken singly or in combination, do not teach or suggest claim limitations of claims 1, 6 and 11.

CNN and Schneier, taken singly or in combination, do not teach or suggest "providing a decryption key to a transmitter to be broadcasted within said defined distribution area of said broadcaster" as recited in claim 1 and similarly in claims 6 and 11. The Examiner cites page 523 of Schneier as teaching the above-cited claim limitation. Paper No. 3, page 7. Applicants respectfully traverse.

CNN instead teaches broadcasting a television channel over the Internet.

Schneier instead teaches broadcasting an encrypted message. Page 523.

None of these references, taken singly or in combination, teach providing a decryption key to a transmitter. Therefore, the Examiner has not presented a *prima*

facie case of obviousness in rejecting claims 1, 6 and 11, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Neither do any of these references, taken singly or in combination, teach providing a decryption key to a transmitter to be broadcasted within a defined distribution area of the broadcaster. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 1, 6 and 11, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

3. Claims 2-5, 7-10 and 12-15 are patentable over CNN in view of Schneier for at the reasons stated in Section E.2.

Claims 2-5 depend from claim 1 and hence are patentable over CNN in view of Schneier for at least the reasons that claim 1 is patentable over CNN in view of Schneier as discussed in Section E.2. Claims 7-10 depend from claim 6 and hence are patentable over CNN in view of Schneier for at least the reasons that claim 6 is patentable over CNN in view of Schneier as discussed in Section E.2. Claims 12-15 depend from claim 11 and hence are patentable over CNN in view of Schneier for at least the reasons that claim 11 is patentable over CNN in view of Schneier as discussed in Section E.2.

4. Claims 2, 7 and 12 are patentable over CNN and in view of Schneier.

Applicants respectfully assert that CNN in view of Schneier, taken singly or in combination, do not teach or suggest "receiving said decryption key by one or more users of computer systems located approximately within said defined distribution area of said broadcaster" as recited in claim 2 and similarly in claims 7 and 12. The Examiner cites page 523 of Schneier as teaching the above-cited claim limitation. Paper No. 3, page 7 Applicants respectfully traverse.

Schneier instead teaches broadcasting an encrypted message. Page 523.

There is no language in Schneier that teaches receiving a decryption key by users of computer systems. Neither is there any language in Schneier that teaches

receiving a decryption key by users of computer systems located approximately within a defined distribution area. Neither is there any language in Schneier that teaches receiving a decryption key by users of computer systems located approximately within a defined distribution area of a broadcaster. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 2, 7 and 12, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

5. Claims 4, 9 and 14 are patentable over CNN in view of Schneier.

Applicants respectfully assert that CNN in view of Schneier, taken singly or in combination, do not teach or suggest "reproducing said decrypted digital broadcast by an audio transducer" as recited in claim 4 and similarly in claims 9 and 14. The Examiner takes Official Notice that it would have been obvious to a person of ordinary skill in the art to use an audio transducer to reproduce the digital broadcast. Paper No. 3, page 7. The Examiner's motivation is to allow the receiver to hear the audio of the digital broadcasted TV. Paper No. 3, page 8.

Applicants respectfully traverse the implied assertion that it would have been obvious to one of ordinary skill in the art to modify CNN in view of Schneier to reproduce a decrypted digital broadcast by an audio transducer. Applicants respectfully request the Examiner to provide a reference that teaches reproducing a decrypted digital broadcast by an audio transducer pursuant to M.P.E.P. §2144.03. Furthermore, the Examiner is reminded that in order to establish a *prima facie* case of obviousness the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 1994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Examiner states "to allow the receiver to hear the audio of the digital broadcasted TV" as motivation. However, the Examiner has not provided any evidence that his motivation comes from any of the sources listed above. Instead, the Examiner is relying upon his own subjective opinion which is

insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 4, 9 and 14. *Id.*

6. Claims 16, 19 and 22 are patentable over CNN in view of Schneier.

Applicants respectfully assert that CNN and Schneier, taken singly or in combination, do not teach or suggest "receiving a request to transmit said broadcast from a requester" as recited in claim 16 and similarly in claims 19 and 22. The Examiner simply asserts that the combination of CNN and Schneier teach the above-cited claim limitation without citing to any page or passage in either reference. Paper No. 3, page 8. Applicants respectfully traverse the assertion that CNN and Schneier taken together teach the above-cited claim limitation.

CNN instead teaches broadcasting television channels over the Internet. Schneier instead teaches transmitting an encrypted message. There is no language in either reference (or in combination) that teaches receiving a request to transmit a broadcast. Neither is there any language in either reference (or in combination) that teaches receiving a request to transmit a broadcast from a requester. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 16, 19 and 22, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

Applicants further assert that CNN and Schneier, taken singly or in combination, do not teach or suggest "determining an approximate physical location of said requester" as recited in claim 16 and similarly in claims 19 and 22. The Examiner asserts that this limitation is inherent in CNN. Paper No. 3, page 8. Applicants respectfully traverse.

Applicants respectfully traverse the assertion that CNN inherently teaches determining an approximate physical location of a requester. The Examiner must provide a basis in fact and/or technical reasoning to support the assertion that CNN inherently teaches determining an approximate physical location of a requester. *Ex*

parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). That is, the Examiner must make clear that CNN inherently teaches determining an approximate physical location of a requester, and that it would be so recognized by persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 745 (Fed. Cir. 1999). Inherency, however, may not be established by probabilities or possibilities. *Id.* The mere fact that a certain thing may resolve from a given set of circumstances is not sufficient. *Id.* Therefore, the Examiner must support the inherency argument with objective evidence meeting the above requirements. Since the Examiner has not provided such evidence, the Examiner has not presented a *prima facie* case of obviousness for rejecting claims 16-24. M.P.E.P. §2143.

Applicants further assert that CNN and Schneier, taken singly or in combination, do not teach or suggest "transmitting said broadcast over the Internet to said requester if said requester is physically located approximately within said defined distribution area" as recited in claim 16 and similarly in claims 19 and 22. The Examiner simply asserts that the combination of CNN and Schneier teach the above-cited claim limitation without citing to any page or passage in either reference. Paper No. 3, page 8. Applicants respectfully traverse the assertion that CNN and Schneier taken together teach the above-cited claim limitation.

CNN instead teaches broadcasting television channels over the Internet. Schneier instead teaches transmitting an encrypted message. There is no language in either reference (or in combination) that teaches transmitting a broadcast over the Internet to a requester if the requester is physically located approximately within a defined distribution area. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 16, 19 and 22, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

7. Claims 18, 21 and 24 are patentable over CNN in view of Schneier for at least the reasons that claims 16, 19 and 22 are patentable over CNN in view of Schneier.

Claims 18, 21 and 24 depend from claims 16, 19 and 22, respectively, and therefore are patentable over CNN in view of Schneier for at least the reasons that claims 16, 19 and 22 are patentable over CNN in view of Schneier as stated above in Section E.6.

8. Claims 18, 21 and 24 are patentable over CNN in view of Schneier.

Applicants respectfully assert that CNN and Schneier, taken singly or in combination, do not teach or suggest "wherein said broadcast is not transmitted over the Internet to said requester if said requester is physically located approximately outside said defined distribution area" as recited in claim 18 and similarly in claims 21 and 24. The Examiner simply asserts that the combination of CNN and Schneier teach the above-cited claim limitation without citing to any page or passage in either reference. Paper No. 3, page 8. Applicants respectfully traverse the assertion that CNN and Schneier taken together teach the above-cited claim limitation.

CNN instead teaches broadcasting television channels over the Internet. Schneier instead teaches transmitting an encrypted message. There is no language in either reference (or in combination) that teaches not transmitting a broadcast over the Internet to a requester if the requester is physically located approximately outside a defined distribution area. Therefore, the Examiner has not presented a *prima facie* case of obviousness in rejecting claims 18, 21 and 24, since the Examiner is relying upon an incorrect, factual predicate in support of the rejection. *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998).

9. The Examiner fails to provide a motivation for modifying CNN with Schneier to include the limitations of claims 16, 18-19, 21-22 and 24.

In order to establish a *prima facie* case of obviousness, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See*

In re Dembiczak, 175 F.3d 1994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Examiner has not provided any motivation for modifying CNN with Schneier to include the lacking limitations (Examiner has not specifically identified the limitations in claims 16, 18-19, 21-22 and 24 that are not taught by CNN) recited in claims 16, 18-19, 21-22 and 24. Accordingly, the Examiner has not established a *prima facie* case of obviousness in rejecting claims 16, 18-19, 21-22 and 24. M.P.E.P. §2143.

- F. Claims 17, 20 and 23 are not properly rejected under 35 U.S.C. §103(a) as being unpatentable over CNN in view of Schneier and in further view of Schlossberg.

The Examiner has rejected claims 17, 20 and 23 under 35 U.S.C. §103(a) as being unpatentable over CNN in view of Schneier and in further view of Schlossberg et al. (U.S. Publication No. 20020066034) (hereinafter "Schlossberg"). Paper No. 3, page 8. Applicants respectfully traverse these rejections for at least the reasons stated below and respectfully request the Examiner to reconsider and withdraw these rejections.

1. The Examiner has not provided any objective evidence or appropriate motivation for modifying CNN and Schneier with Schlossberg.

As stated above, a *prima facie* showing of obviousness requires the Examiner to establish, *inter alia*, that the prior art references teach or suggest, either alone or in combination, all of the limitations of the claimed invention, and the Examiner must provide a motivation or suggestion to combine or modify the prior art reference to make the claimed inventions. M.P.E.P. §2142. The showings must be clear and particular and supported by objective evidence. *In re Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433-34 (Fed. Cir. 2002); *In re Kotzab*, 217 F.3d 1365, 1370, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000); *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). Broad conclusory statements regarding the teaching of multiple references, standing alone, are not evidence. *Id.*

The Examiner admits that CNN and Schneier do not teach capturing an Internet Protocol of the requester; converting the captured Internet Protocol of the requester into a computer name; and performing a trace of the request, as recited in claim 17 and similarly in claims 20 and 23. Paper No. 3, page 8. The Examiner states that Schlossberg teaches the above-cited claim limitations. Paper No. 3, page 9. The Examiner then concludes that by combining these references that the above-cited claim limitations would be taught. Paper No. 3, page 9. The Examiner's motivation for combining these references is that it "would have been to determine the physical location of a device on the Internet". Paper No. 3, page 9. The Examiner's motivation is insufficient to support a *prima facie* case of obviousness for at least the reasons stated below.

In order to establish a *prima facie* case of obviousness, the Examiner must provide some suggestion or motivation, either in the references themselves, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved, to modify the reference or to combine reference teachings. *See In re Dembiczak*, 175 F.3d 1994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). The Examiner states "to determine the physical location of a device on the Internet" as motivation. However, the Examiner has not provided any evidence that his motivation comes from any of the sources listed above. Instead, the Examiner is relying upon his own subjective opinion which is insufficient to support a *prima facie* case of obviousness. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness for rejecting claims 17, 20 and 23. *Id.*

Furthermore, if the Examiner is asserting that the motivation comes from either the knowledge of one of ordinary skill in the art or from the nature of the problem to be solved⁵, then Applicants respectfully request the Examiner to specify as such.

⁵ CNN does not specifically address a problem to be solved, rather, CNN discusses some of the legal issues involved in broadcasting television channels over the Internet. Schneier does not specifically address a problem to be solved, rather,

Furthermore, the Examiner's motivation ("to determine the physical location of a device on the Internet") appears to have been gleaned from Applicants' disclosure (page 17 of Applicant's Specification). Any judgment on obviousness must not include knowledge gleaned only from applicant's disclosure. *In re McLaughlin*, 170 U.S.P.Q. 209, 212 (C.C.P.A. 1971). Consequently, the Examiner's motivation is insufficient to support a *prima facie* case of obviousness in rejecting claims 17, 20 and 23 since it is merely the Examiner's subjective opinion. *In re Lee*, 61 U.S.P.Q.2d 1430, 1434 (Fed. Cir. 2002).

Schneier discusses conference key distribution and secret broadcasting (page 523). Schlossberg address the problem of security systems being limited in their ability to detect or deny access to assailants who are highly skilled in overcoming simple deception methods (paragraph 0011). Hence, the nature of the problem to be solved by each of these references do not provide any motivation for modifying CNN and Schneier to incorporate the above-cited claim limitations.

II. CONCLUSION:

As a result of the foregoing, it is asserted by Applicants that claims 1-24 in the Application are in condition for allowance, and Applicants respectfully request an allowance of such claims. Applicants respectfully request that the Examiner call Applicants' attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining issues.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

Attorneys for Applicants

By: _____

Robert A. Voigt, Jr.

Reg. No. 47,159

Kelly K. Kordzik

Reg. No. 36,571

P.O. Box 50784
Dallas, TX 75201
(512) 370-2832

Austin_1 287735v.1